

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In Re Application of:

Bruce Preston Williams

Serial No. 10/604,304

Group Art Unit: 3618

Filed: 07/09/2003

Examiner: Pham, Hau Van

For: DEPLOYABLE STEP FOR MOTOR VEHICLES

Attorney Docket No. 202-1228

CERTIFICATE OF MAILING/TRANSMISSION (37 C.F.R. § 1.8(a))

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Date: 11-6-2006

Donna Kraft

BRIEF ON APPEAL

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

The following Appeal Brief is submitted pursuant to the Notice of Appeal dated September 6, 2006, for the above-identified application.

I. Real Party in Interest

The real party in interest in this matter is Ford Global Technologies, LLC, which is a wholly owned subsidiary of Ford Motor Company, both of Dearborn, Michigan (hereinafter "Ford").

II. Related Appeals and Interferences

There are no other known appeals or interferences which will directly affect or be directly affected by or have bearing on the Board's decision in the pending appeal.

III. Status of the Claims

Claims 1-8 and 11-12 are pending in the application. Claims 9-10 have been cancelled. Claims 13-17 have been withdrawn. Claims 1-8 and 11-12 stand rejected in the Final Office Action. The rejection of each of Claims 1-8 and 11-12 is being appealed.

IV. Status of Amendments

No Amendments were filed after the final rejection.

V. Summary of Claimed Subject Matter

As set forth in Appellant's specification and drawings, and with particular reference to Figures 1, 3, 4 and 9 of Appellant's application as well as in paragraph 28, at lines 1-11, and in paragraph 29, at lines 1-15, of Appellant's specification, Appellant's claimed invention includes a step 34 having a first position 66 in which step 34 is considered "up" or locked in a stowed position. Step 34 also has a second position 68 shown in Figures 7 and 9. As shown in Figures 7 and 9, step 34 may be unlocked and pulled to an angle that is both away from motor vehicle 10 and down towards the ground which will allow step 34 to travel for approximately 90 degrees of rotation to second position which this step may actually use as "staircase" of sorts so as to allow person to step to from the ground to step 34 and into bumper 22. Note from the Figures and, from Claim 1, that step is attached to a rear structural member of the vehicle body such that the trailer hitch included in the motor vehicle is operational when the step is either in the first (stowed) or second (deployed) position.

VI. Grounds of Rejection to be Reviewed on Appeal

Are Claims 1-8, and 11 properly rejected under 35 U.S.C. 103(a) as being unpatentable over Blake (6,874,806)?

Is Claim 12 properly rejected under 35 U.S.C. 103(a) as being unpatentable over Blake (6,874,806) in view of Hehr (6,685,204)?

VII. Argument

Claims 1-8 and 11 are allowable over Blake (6,874,806) Fig. 8, in view of Blake Fig. 5b or Fig. 6.

The Examiner states that Blake, in Fig. 8, discloses a trailer hitch cover for a motor vehicle. The Examiner states that Blake's cover includes a structure "which is capable to use (sic) as a step." The Examiner continues with the argument that Blake discloses a cover or a step (516) which is pivotably coupled to a bracket and operative to articulate about an axis between first and second positions. The Examiner continues with the argument that Blake, in Figs. 5b and 6, discloses a trailer hitch cover assembly (110) including a trim fascia (170). The trim fascia has an aperture or window (180). The trailer hitch assembly includes a cover assembly (286, Fig. 6, 186, Fig. 5b). The Examiner asserts that Blake's cover assembly includes a rotatable door or a cover plate (156, Col. 7, lines 1-42). Immediately addressing this point, Appellant notes that Blake recites the following at column 7, lines 34-40: "It should be appreciated that fascia plate 188 is purely aesthetic and the structural strength of the cover assembly 186 properly lies with cover plate 156. It should be appreciated that the cover assembly (186) is rotatable via hinge pin (166) between a closed position and an open position, allowing access to the cavity (15) of the hitch tube (14)."

The Examiner concludes his rejection with the statement that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the cover plate or step of Blake in figure 8 with the trailer hitch cover assembly having an aperture or a window, which includes a rotatable window or a cover plate as taught by Blake in figure 5b in order to provide an access to the trailer hitch with the cover plate or the step in the first position or the second position."

Section 706.02(j) of the MPEP states that 35 U.S.C. 103 authorizes a rejection, providing the Examiner sets forth the following in the Office Action:

- A) relevant teachings of the prior art relied upon, preferably with reference to the relevant column or page number(s) and line number(s) where appropriate,
- B) the difference or differences in the claim over the applied reference(s),
- C) the proposed modification of the applied reference(s) necessary to arrive at the claimed subject matter, and
- D) an explanation why one of ordinary skill in the art at the time the invention was made would have been motivated to make the proposed modification.

Section 706.02(j) also sets forth requirements underlying a *prima facie* case of obviousness. Three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. Further, the references must either expressly or impliedly suggest the claimed invention or the Examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.

In the present case, Blake cannot comprise even a colorable basis for the rejection of Appellant's Claims 1-8 and 11 under 35 U.S.C. §103(a). Although Blake includes a rotatable door or cover plate, Blake is devoid of any teaching or suggestion that his cover plate could be used as a step. This conclusion is buttressed by Blake at Col. 7, lines 34-39, wherein it is said: "It should be appreciated that fascia plate 188 is purely aesthetic and the structural strength of the cover assembly 186 properly lies with cover plate 156. It should be appreciated that the cover assembly 186 is rotatable via the hinge pin 166 between a closed position and an open position, allowing access to the cavity 15 of the hitch tube 14."

The fact is that Blake neither teaches nor suggests anything regarding a step which is pivotably coupled so as to allow the step to be articulated about an axis between first and second positions so that a trailer hitch may be operational when the step is in either of the first or second positions. In making his rejection, the Examiner has drawn a "proposed window" which, he asserts, is taken from Blake's Fig. 5b.

Turning now to Blake's Fig. 5b, Appellant respectfully submits that one will look in vain for any type of folding cover having any type of window therein. Simply put, Blake teaches nothing regarding a hitch cover having a window. Blake's cover allows access to his hitch tube only when the cover is open.

The Examiner's drawing, in the final Office Action, of a cover having a window, is wholly unsupported by Blake, and is merely hindsight reconstruction of Appellant's invention. Appellant respectfully requests the Examiner in his Answer to describe any scintilla of evidence within the four corners of Blake setting forth a hinged cover having an aperture permitting passage of a trailer hitch when the cover is both open or closed. Because Blake does not teach or suggest the limitations set forth in Appellant's Claim 1, Claim 1 as well as Claims 2-8, and 11, which depend from Claim 1, are allowable over the Examiner's rejection, and the rejection should be reversed.

Claim 12 is allowable over Blake (6,874,806) at Fig. 8, in view of Blake at Fig. 5b or Fig. 6, and further in view of Hehr (6,685,204).

The Examiner states that Blake does not show a spring handle and a retainer for locking a step. For this, the Examiner turns to Hehr.

Appellant's Claim 12 claims a step as set forth in Claim 1 and further having a lockout mechanism which is actuated by a sliding pin. Hehr teaches use of a locking pin for a trailer hitch, but teaches nothing regarding a folding step. Neither Blake nor Hehr, whether taken singly or in combination with each other, either teach or suggest Appellant's invention as set forth in Claim 12, which is dependent upon Claim 11, and ultimately upon Claim 1. As a result, Claim 12, too, is allowable over the Examiner's rejection, and the rejection should be reversed.

VIII. Claims Appendix

A copy of each of the claims involved in this appeal, namely Claims 1 and 3-17, is attached as a Claims Appendix.

IX. Evidence Appendix

None.

X. Related Proceedings Appendix

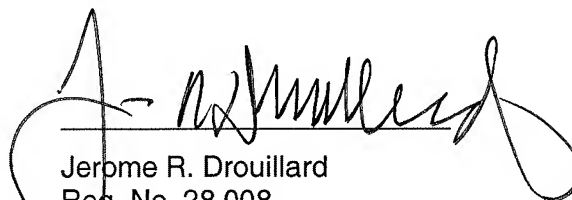
None.

XI. Conclusion

For the foregoing reasons, Appellant respectfully requests that the Board direct the Examiner in charge of this case to withdraw the rejection.

Please charge any fees required in the filing of this appeal to deposit account 06-1510.

Respectfully submitted,



Jerome R. Drouillard
Reg. No. 28,008
Attorney for Appellants

Date: _____

11/6/06

Artz & Artz, PC
28333 Telegraph Road
Suite 250
Southfield, MI 48034
248-223-9500
Fax: 248-223-9522

CLAIMS APPENDIX

Claim 1. A motor vehicle comprising:
a body having a front end, a rear end and a roof; a plurality of wheels coupled to said body;
a rear structural member located at said rear end of said body;
a trailer hitch attached to said structural member;
a pair of brackets attached to said structural member and spaced a predetermined distance apart;
a rear bumper configured to both cover said structural member and to allow for access to said brackets; and
a step pivotally coupled to said brackets and operative to articulate about an axis between first and second positions, with said brackets being attached to said structural member such that said trailer hitch is operational when said step is in either of said first or second positions.

Claim 2. A motor vehicle according to claim 1, wherein said rear structural member is formed with said brackets integral therewith.

Claim 3. A motor vehicle according to claim 1, wherein said brackets are independent pieces and are attached to said rear structural member by one of welding, bolting, and riveting means.

Claim 4. A motor vehicle according to claim 1, wherein said brackets extend a predetermined distance from said structural member and said bumper.

Claim 5. A motor vehicle according to claim 1, wherein said step is u-shaped having two leg members, with one of said leg members each attached to each of said brackets, and a planar member disposed between said leg members and wherein said planar member has a first side and a second side.

Claim 6. A motor vehicle according to claim 5, wherein said planar member is substantially vertically oriented when said step is in said first position, and substantially horizontally oriented to provide a step when in said second position.

Claim 7. A motor vehicle according to claim 5, wherein said first side of said step provides a stepping surface when said step is in said second position and wherein said first side

includes a plurality of traction improving grooves extending perpendicular to said axis for the length of said planar member.

Claim 8. A motor vehicle according to claim 5, wherein said leg members are contoured to render said step flush with said bumper when said step is in said first position.

Claim 11. A motor vehicle according to claim 1, further comprising a lockout mechanism for said step.

Claim 12. A motor vehicle according to claim 11, wherein said lockout mechanism is a spring loaded sliding lockout key comprising:

- a sliding pin having a first and second end; a handle attached to the first end of said pin;
- a spring positioned on the second end of said pin; and
- a retainer positioned on said second end of said pin operative to hold said spring in place.

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

None.